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**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

**[WC Docket No. 07-245, GN Docket No. 09-51; DA 15-542]**

**Parties Asked to Refresh Record Regarding Petition to Reconsideration Cost Allocators Used to Calculate the Telecom Rate for Pole Attachments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on a petition for reconsideration or clarification filed by the National Cable and Telecommunications Association (NCTA), COMPTTEL, and tw telecom inc. (Petitioners) in the above-referenced proceedings. Petitioners request that “the rules be clarified or amended by specifying [that] the cost allocator to be applied [will be] based on the number of attaching entities.”

**DATES:** Comments are due on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICAITON IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 31 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 07-245 and GN Docket No. 09-51, by any of the following methods:

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Reel, Wireline Competition Bureau, Competition Policy Division, (202) 418-0637, or send an email to [johnathan.reel@fcc.gov](mailto:johnathan.reel@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document in WC Docket No. 07-245, GN Docket Nos. 09-51; DA 15-542 released on May 6, 2015. It is available on the Commission's Web site at <http://www.fcc.gov>.

## **I. PUBLIC NOTICE**

1. By this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on a petition for reconsideration or clarification filed by the National Cable and Telecommunications Association (NCTA), COMPTTEL, and tw telecom inc. (Petitioners) on June 8, 2011 in the above-referenced proceedings.

2. With respect to the rule concerning the calculation of pole attachment rates charged to telecommunications providers pursuant to section 224(e) of the Communications Act, Petitioners request that "the rules be clarified or amended by specifying [that] the cost allocator to be applied [will be] based on the number of attaching entities." In support of this request, Petitioners state that, in the 2011 Pole Attachment Order, "the new formula adjusts the cost basis to 66 percent in urban service areas and to 44 percent in rural service areas. When paired with the presumptions that there are five

entities on urban poles and three entities on rural poles, the illustrative calculation almost exactly equals the cable rate.” Petitioners assert, however, that as written the rule may be read to address only the cases of the presumed three and five attaching entities. Therefore, Petitioners request that the Commission clarify or expand the telecom rate formula to “provide the corresponding cost adjustments scaled to other entity counts.” Petitioners request, alternatively, that “the Commission could adopt the proposal in the 2010 Pole Attachment FNPRM to establish the maximum just and reasonable rate as the higher of the cable rate . . . or the ‘lower bound’ telecom rate obtained by excluding capital costs from the definition of ‘cost of providing space’ in the existing telecom rate formula.”

3. A Public Notice released on June 20, 2011 announced the comment cycle for the Petition. The Commission subsequently published that document A National Broadband Plan For Our Future; Petition for Reconsideration, 76 FR 44495, July 26, 2011. The Commission received comment both for and against the Petition.

4. After the close of the comment cycle concerning the Petition, on February 26, 2013, the U.S. Court of Appeals for the D.C. Circuit upheld the 2011 Pole Attachment Order, including the Commission’s rule for calculating the pole attachment rate for providers of telecommunications services. Among other things, the Court determined that the term “cost,” as used in section 224(e), is open to a wide range of reasonable interpretations; that the Commission’s methodology for apportioning “cost” among pole attaches for purposes of the telecom rate is consistent with section 224(e); and that the Commission’s justifications for its decision concerning the telecom rate were reasonable. In addition, the Commission’s 2015 Open Internet Order discussed the concern raised in the Petition regarding consequences to the goals of the 2011 Pole Attachment Order if the cost allocation rule were interpreted to apply fully only in instances where there are three and five attaching entities. With regard to any possible adverse effect on investment incentives from such an interpretation, the Open Internet Order stated that the Commission would be “concerned by any

potential undermining of the gains the Commission achieved by revising the pole attachment rates paid by telecommunications carriers” in 2011 and accordingly would be “monitoring marketplace developments. . . and can and will promptly take further action in that regard if warranted.” Given the time that has elapsed since the filing and original comment cycle on the NCTA Petition, as well as the subsequent events discussed above, we seek to ensure that the record reflects current viewpoints on the issues raised in the NCTA Petition.

## **II. PROCEDURAL MATTERS**

### **A. Accessible Formats**

5. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: (202) 418-0530 (voice), (202) 418-0432 (TTY).

### **B. Filing Requirements**

6. Ex Parte Rules. This proceeding continues to be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the

proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

7. Comment and Reply Comment. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
  - Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by firstclass or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington D.C. 20554.

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FEDERAL COMMUNICATIONS COMMISSION.

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